

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TWO RIVERS BANK,
Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY, incorrectly named as
STATE FARM INSURANCE COMPANY,
Defendant.

Case No. _____

NOTICE OF REMOVAL

COMES NOW the Defendant, State Farm Fire and Casualty Company, incorrectly named as "State Farm Insurance Company," by and through its counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby removes this lawsuit from the District Court of Washington County, Nebraska, to the United States District Court for the District of Nebraska. In support thereof, State Farm states as follows:

1. On July 6, 2015, the Plaintiff, Two Rivers Bank, filed a Complaint against the Defendant, State Farm Fire and Casualty Company, incorrectly named as "State Farm Insurance Company" (hereafter, "State Farm.") A true and correct copy of the Complaint is attached hereto as Exhibit "A."

2. On July 14, 2015, the Plaintiff effected service of the Complaint upon State Farm.

3. The Plaintiff's Complaint alleges claims against State Farm for breach of contract and bad faith. (Complaint, ¶¶ 8-22.) The Complaint alleges the Plaintiff has incurred at least \$293,905.20 in damages as an alleged result of State Farm's actions. (Id., p. 5) The Complaint alleges these alleged actions occurred in the State of Nebraska. (See id.)

4. The Plaintiff is a Nebraska banking institution.

5. State Farm is an Illinois corporation, with its principal place of business located in Bloomington, Illinois.

6. Removal to the United States District Court for the District of Nebraska is proper because there is complete diversity of citizenship between the parties to this

lawsuit and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441, and 1446.

7. On August 7, 2015, State Farm filed with the District Court of Washington County, Nebraska, a Notice of Removal and served a written copy of the Notice upon the Plaintiff's counsel.

8. State Farm requests a trial by jury on all matters raised in the above-captioned lawsuit and prays that the Court holds such jury trial in the United States District Court located in Omaha, Nebraska.

WHEREFORE, State Farm requests removal of the above-captioned lawsuit from the District Court of Washington County, Nebraska, to the United States District Court for the District of Nebraska and that a jury trial be held in the United States District Court located in Omaha, Nebraska.

DATED this 7th day of August, 2015.

STATE FARM FIRE AND CASUALTY
COMPANY, incorrectly named as STATE
FARM INSURANCE COMPANY, Defendant

By: /s/ Rex A. Rezac

Rex A. Rezac, #17787

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Notice of Removal was served by regular U.S. Mail, postage prepaid, this 7th day of August 2015, to:

John M. Lingelbach
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By: /s/ Rex A. Rezac, #17787

03350-54705/1334087

IN THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA

TWO RIVERS BANK,

Plaintiff,

v.

STATE FARM INSURANCE COMPANY,

Defendant.

Case No. _____

COMPLAINT

COMES NOW the Plaintiff, Two Rivers Bank, and for its claims against the Defendant, State Farm Insurance Company, states and alleges as follows:

1. Plaintiff, Two Rivers Bank ("Two Rivers"), is a banking institution chartered under the laws of the State of Nebraska with its principal place of business in Washington County, Nebraska.

2. Defendant, State Farm ("State Farm"), is a foreign company transacting insurance business in the State of Nebraska and involved in the issuance of policies of insurance including policies for homeowners.

3. Two Rivers is the holder of a real estate lien ("Lien") on property owned by Ramona Keermen and Kevin Kermeen, husband and wife ("Kermeens") which consists of real estate and improvements thereon, including a dwelling located at 10880 Cook Drive in Blair, Nebraska ("Insured Residence"). Such lien was created by virtue of a Deed of Trust executed by the Kermeens in favor of Two Rivers.

4. At all times relevant hereto the Insured Residence was insured under a policy of insurance issued by the Defendant, State Farm and identified as Policy No. 27-CX-5768-1 with a policy term commencing December 14, 2013 and continuing until December 14, 2014 with renewals thereafter (the "Homeowners' Policy").

EXHIBIT "A"

5. At all times relevant thereto State Farm through the Homeowners' Policy insured the Insured Residence for loss by fire and other casualty including the Kermeens' dwelling, structures attached to the dwelling, and personal property owned by the Kermeens. Further, under the Homeowners' Policy Two Rivers was an insured "mortgagee" and entitled to payment of any loss as a result of fire or other casualty occurring at the Insured Residence.

6. On or about March 7, 2014, a fire occurred at the Insured Residence causing severe damage.

7. On or about June 3, 2014, the Insured Residence suffered severe damage from a hail storm.

**FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT – FIRE LOSS**

8. Plaintiff incorporates the allegations contained in paragraphs 1 through 7 above as if fully set forth herein.

9. Two Rivers has satisfied all conditions for payment under the Homeowners' Policy issued for the dwelling on Cook Drive and caused by the March 7, 2014, fire. Two Rivers has made demands for payment from State Farm under the Homeowners' Policy but State Farm has wholly failed and refused to make payment for the coverage provided.

10. State Farm has breached its obligations under the Homeowners' Policy by failing to make the required contractual payments to Two Rivers for fire damage as required by the Homeowners' Policy and Two Rivers has been damaged thereby.

**SECOND CLAIM FOR RELIEF
BREACH OF CONTRACT - HAIL LOSS**

11. Plaintiff incorporates the allegations contained in paragraphs 1 through 10 above as if fully set forth herein.

12. State Farm, has breached its obligations under the Homeowners' Policy by failing to make payment to the Two Rivers as a result of the hail damage sustained by the Insured Residence and Two Rivers has been damaged thereby.

**THIRD CLAIM FOR RELIEF
BAD FAITH**

13. Plaintiff incorporates the allegations contained in paragraphs 1 through 12 above as if fully set forth herein.

14. State Farm, is required by law to act in good faith in the investigation and settlement of first party claims with its insured policy holders including mortgagees under the Homeowners' Policy.

15. On information and belief, the fire of March 7, 2014, occurring at the Insured Residence, was deemed "accidental" by the Nebraska State Fire Marshall.

16. Notwithstanding this fact, State Farm appears to allege that the fire may have been intentionally started and therefore is refusing to pay.

17. The Homeowners' Policy provides the following rights to mortgagees such as Two Rivers:

If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:

1. notifies us of any change in the ownership, occupancy or substantial change in the risk in which the mortgagee is aware;
2. pays on demand of any premium due under this policy, if you have not paid the premium; and

3. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to appraisal, suit against us and loss payment apply to the mortgagee.

18. The above language provides that, even if there is a denial of the Kermeens' claim for fire or hail damage with State Farm, such denial does not apply to mortgagees such as Two Rivers.

19. Notwithstanding the above language, State Farm has repeatedly refused and failed to make payments to the mortgagee, Two Rivers, under the terms of the Homeowners' Policy.

20. Further, State Farm wrongfully demanded that Two Rivers file a claim for the damages to the Insured Residence even though the Kermeens had already done so negating any requirement that Two Rivers provide a claim to State Farm.

21. State Farm has committed acts of bad faith:

- a. by failing and refusing to pay a valid claim which it acknowledges is due; and

- b. by violating the Nebraska Unfair Claims Settlement Practices Act by failing to attempt in good faith to effectuate prompt, fair and equitable settlement of the claims when coverage and the amount of loss were reasonably clear; and

- c. by requiring the mortgagee, Two Rivers to submit a claim when such claim had ready been submitted by the Kermeens.

22. As result of State Farm's bad faith actions, Two Rivers has suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, Two Rivers Bank, prays for judgment against the Defendant, State Farm for amounts to be determined which damages continue to be incurred including, but not limited to:

- a. the balance of the Two Rivers Lien on the Insured Residence in the amount of \$312,525.85 as of May 1, 2015;
- b. in the alternative, the loss to the Insured Residence in the amount of \$293,905.20;
- c. plus further damages to be determined by reason of increased construction costs and damages to the Insured Residence not yet capable of being assessed before demolition;
- d. for reasonable attorneys' fees as provided by Neb. Rev. Stat. § 44-359;
- e. for pre- and post judgment interest;
- f. for damages sustained by Two Rivers as a result of State Farm's bad faith denial of the mortgagee's claim; and
- g. for the costs of this action and for such other and further relief as the Court deems just and equitable.

Dated this 6th day of July, 2015.

TWO RIVERS BANK, PLAINTIFF,

By: 

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